

REMARKS

The present application has again been thoroughly reviewed in light of the most recent Office Action of March 1, 2011. In view of the Amendments made herein, reconsideration of the rejection with a view toward allowance is respectfully solicited.

It is noted that Claims 20, 21 and 22 have been indicated as allowable.

Claims 2, 6-17, 23, 24 and 25 were rejected on formal grounds as being indefinite under Section 112, the Examiner indicating that parent claim 25 was unclear as with respect to the "projection(s) and recess emanating from the circumferential area". This indefiniteness has now been corrected so that the claim relates only to the projection and not the recess. Accordingly, the rejection under 35 USC §112 should be set withdrawn.

A new parent Claim 26 has been included herein to cover the form of the invention that includes a recess or recesses emanating from the shaped extension.

It is noted that claims 6-17 would be allowable if written to overcome the 35 U.S.C. §112 rejection and if they include all of the limitations of the base claim on which they depend and any intervening claims.

Claims 25 and 26 are the only remaining rejected independent claims remaining in this application. All of the other rejected claims in the case now depend from Claim 25 or from claims dependent therefrom. These two claims are identical except for the projection (Claim 25) or the recess (Claim 26)

Claim 25 stands rejected as unpatentable (35 U.S.C. § 103) over Brown et al (5,566,882) taken in view of Fasterding (4,802,623).

The Examiner's stated position in the most recent Office Action is identical to his statements as set forth in the Office Action of September 2, 2010. Therefore it is apparent that the Examiner did not fully consider the arguments included in Applicant's response of December 11, 2010, and specifically the fact that parent Claim 25 differs from the previously presented claim in that both the holder and the insert have been recited such that:

- the insert is cast integrally into the concrete sleeper
- the holder includes a base section with a shaped extension on the bottom and positively engaging in the insert, and wherein the shaped extension has a cylinder disc geometry from which emanates at least one projection.

It was the understanding of counsel that in a telephone conference with the Examiner in November of 2010, that if the subject matter of Claims 4 and 5 were included in the parent Claim 25, that the Claim would probably be considered as allowable. These dependent claims were previously cancelled

and the subject matter incorporated into Claim 25.

There are numerous essential differences between the invention claimed herein and the cited prior art as set forth further below.

Brown was discussed in the original application as filed in the form of the European Patent (EP-B-0 619 852). Note page 2, first paragraph. The company Padrol Ltd. is the owner of this application as well as the *Brown* patent.

The Examiner refers to Figure 6E of *Brown*. This figure shows an anchoring device on shoulder 5 into which a rail clip is insertable. A stem 50 is an integral part of the anchoring device 5 and is embedded in the concrete sleeper 16 *et al* during the process of manufacturing the sleeper 3 (see column 10, lines 45-50).

Consequently, no insert is provided into which the holder is detachably inserted. As a result, if the holder is damaged in use, the concrete sleeper becomes useless since it is not possible to replace the holder without destruction of the concrete sleeper.

Fasterding uses an elastic clip for securing a rail, but no holder according to the present claimed invention. Rather, a guiding plate 7 which rests on a sleeper is employed. For positioning purposes, a projection extends in a known manner from the bottom of the guiding plate 16 which engages a groove 16 located in the surface of the sleeper.

The prior art and the present invention differ significantly. There are totally different ways of securing the elastic clips and it is noted that the *Fasterding* guiding plate 7 is not arranged in an insert which is cast into the concrete sleeper.

It is Applicant's contention that a replacement of the guiding element with the holder of *Brown* would result solely in that the *Brown* holder would be detachably connected with the sleeper. But, the advantages of the insert consisting of electrically insulating material would not result.

This implies that the advantage of the *Brown* body 16 made of a block of insulating material (which is imperative according to column 11, lines 39,40) becomes meaningless, but which is essential if the clip is to be insulated relative to the rail.

The Examiner has compared the insert of the claimed invention with the glass fibre plugs or dowels. These dowels are designed exclusively for receiving screws 9 as can be seen in Figure 2, without the guiding plate 7 being received by the dowel.

Fasterding differentiates between the dowel 17 and the guiding plate. It is suggested that even in view of the *Brown* patent, one skilled in the art would find no motivation or need to detachably insert the holder of *Brown* into the insert that is cast in the concrete sleeper.

The state of the art offers no hint as to these features as claimed. Even further, there is no suggestion as to the concrete design of the insert and the holder in relation to the form-fitting engagement due to the projections or recesses because dowel 17 is designed rotationally symmetrical and hence lacks projections or recesses as provided in Claims 25 and 26. The recesses and/or projections in the insert insure a definite positioning of the holder to the rail to be secured due to these corresponding projections and recesses in the holder.

In view of the amendments and the remarks as noted above, reconsideration of the rejection of the claims is respectfully solicited with a view to allowance of the application.

Respectfully submitted,



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